

EPA Comments on PADEP PAG-13 Response - EPA responses in RED

1. Numeric reduction for Total Nitrogen (TN): DEP agreed, at the Lancaster meeting, to require a 3% reduction in TN for Appendix D (Bay Pollutant Reduction Plans), in addition to 10% sediment and 5% TP reduction requirements. Appendix D of the proposed PAG-13 General Permit includes a requirement to achieve 3% TN reduction. However, DEP has determined that this 3% TN removal could be the limiting factor for certain MS4s based on various local-scale scenarios we have run. In other words, an MS4 may propose BMPs that will satisfy sediment, but will need to install additional BMPs solely for the purpose of nutrient removal. The 10% reduction requirement for sediment is very aggressive – it will be difficult enough for MS4s to achieve this over a 5-year period, and we do not want to force MS4s to do extra just for nutrients. Therefore, our position, as supported by the Chesapeake Bay Program Office modeling team, is that achieving 10% sediment removal from existing sediment loads will result in a Bay-wide reduction of at least 5% TP and 3% TN. The PRP Instructions document focuses on sediment removal only for Bay PRPs. See fact sheet for additional information.

EPA has significant concern with the language contained in the Fact Sheet and PRP Instructions with respect to the response above. If the PAG-13 states that reductions of 10%, 5%, and 3% for sediment, phosphorus and nitrogen are required, then supporting documentation (such as the fact sheet and PRP Instructions) shall not contain contradictory information that can only serve to confuse permittees and obscure the permit's enforceability. EPA does not support the use of contradictory language in the permit and supporting documents.

2. Achievement of the MS4 urban sector Chesapeake Bay TMDL obligation: The Fact Sheet includes a statement that DEP anticipates that its Target Loads for TMDL implementation will be revised; however, at this time we cannot commit to what those specific loads will be. That will happen following implementation of the Phase 6 Bay model and as part of DEP's Phase 3 WIP.

EPA has proposed edits for the Fact Sheet where the reduction revisions is explained. Please see the marked version of the FS on page 9.

3. Annual Report form: The current Annual Report form is available on [DEP's website](#). It is not part of the General Permit package because it is used both by General Permit and Individual Permit holders (and so that we can change the form at will, without needing to go through a revision to the PAG-13 permit package, which can be lengthy). This form will need to be revised in the future to accommodate 1) changes as a result of the final PAG-13 General Permit; and 2) the NPDES Electronic Reporting Rule. At that point we will also ensure that the annual report includes minimum requirements in 40 CFR 122.33(b) and 122.34(d). When changes to this form are proposed (I believe this spring), the form will be sent to you for your feedback.

EPA is ok with this method. We request that when the new annual report form is completed that it be sent to EPA.

4. PRP Instructions: DEP agrees to eliminate use of the BMP Manual as a reference for BMP effectiveness values. DEP intends to include a separate document of BMP Effectiveness Values (see attached) with this package, most of which are derived from the Bay model, and will be updated as BMP efficiencies are modified in the Bay model.

EPA agrees with this change.

5. Scope: We have removed the term “proposed” with respect to what MS4s may be covered by PAG-13.

EPA agrees with this change.

6. Construction site operator education: DEP agrees to include in the General Permit a requirement that the MCM #4 program include educational measures for construction site operators.

EPA agrees with this change to the permit for MCM#4 in BMP #3.

7. MS3: DEP agrees to avoid the use of the acronym MS3 in the General Permit.

EPA agrees with this change.

8. PRP Revisions: Appendices D (Bay PRP) and E (impaired waters PRP) require submission of a modified PRP to DEP when an MS4 decides to modify the location, type or number of proposed BMPs or modify the storm sewershed map. The modified plan can be implemented if DEP does not object within 60 days. While DEP is hopeful that additional MS4 NPDES application review staff will be in place during the years 2018-2023, based on the resources DEP currently has it will be difficult if not impossible to review all changes to PRPs and issue approvals. We do not wish to be an impediment in the process due to delays; also, the bottom line is that a final report must be submitted in 2023 documenting that the pollutant reductions specified in the PRP (no less than 10% sediment for Bay PRPs) have been achieved through implemented BMPs.

EPA accepts this response.

Comments/Questions Contained within Draft Fact Sheet

1. Permit comment responses: DEP agrees that comments must be responded to (change made).

EPA agrees with this change. Also, PADEP is reminded that the Comment Response Document must be published with the final permit documents.

2. Use of General Permit for impaired segment discharges: It is DEP's intent to allow use of the General Permit for discharges to impaired waters (subject to PRP and PCM requirements of the General Permit) unless an Individual Permit is triggered for other reasons (e.g. special protection waters or a TMDL).

EPA accepts this response.

3. Additional outfalls: Yes, the language you referred to in the fact sheet concerning notification to DEP of the discovery of existing outfalls and the proposal of new outfalls is also in the General Permit; this language has been modified in response to public comments.

EPA agrees with this change.

4. Indefinite Permit Coverage: As we've discussed, we have adopted a model for all our other NPDES General Permits (including the draft PAG-03 that you have reviewed) that an annual report serves as an annual NOI for ongoing coverage; we do believe this is legal.

EPA agrees with this change.

5. CCD MOU requirement for MCM #5: We have included the MOU requirement with CCDs under both MCMs #4 and #5.

EPA agrees with this change.

6. Nitrogen control requirement: Same response as #1, above, for your letter comments. Fact sheet has been updated accordingly.

EPA recommended language changes in the fact sheet related to discussion of Appendix D on pages 8 and 9.

Comments/Questions Contained within Draft General Permit

1. Annual Report: See response to Letter Comment #3.
2. Scope: See response to Letter Comment #5.
3. Sampling of test water discharges: DEP does not expect monitoring of TRC prior to discharging hydrostatic test water discharges (or potable water); however, DEP expects that planned discharges will include BMPs for dechlorination. This is addressed in the comment-response document.

According to the Comment Response Document, PADEP states on page 23 “If the flush/test water is to be directed into storm sewers, a means to dechlorinate the water must be implemented and on-site testing must be done to verify that no measurable chlorine is present in the discharge.” Further down on the same page, when responding to a question on the same topic, PADEP states “DEP recommends an alternative to discharging water line flushings, fire hydrant flushings and hydrostatic test waters to storm sewers; if possible, such discharges should be directed to a well-vegetated area and allowed to infiltrate. If this is not possible and discharge to storm sewers is considered the only option, there are multiple methods to dechlorinate water, including but not limited to dechlorination mats and bags, dechlorinating diffusers (which can connect to fire hydrants), and tablets.”

Whatever it is that PADEP expects from its permittees should be explicitly stated in the permit and fact sheet. The Comment Response Document contains varying responses, which are contradictory in nature and may serve to confuse rather than inform permittees of the proper method to address this situation.

4. Multiple Permits: This is a regulatory requirement in Chapter 92a.54 and the issue comes up routinely with industrial facilities. An industrial facility may have a process wastewater discharge covered by an individual permit, but then seek PAG-03 General Permit coverage for its discharge of industrial stormwater. DEP would generally require that the individual permit cover both types of discharges. In the context of MS4s, we do have some non-municipal MS4s that have individual permits for other discharges (e.g., sewage, industrial stormwater) and we would seek to combine municipal stormwater into the individual permit wherever possible.

EPA accepts this response.

5. DEP TMDLs: It is true that some TMDLs have been prepared by DEP. Such TMDLs would not however be enforced as effective TMDLs until after they were approved by EPA. DEP therefore routinely refers to all effective TMDLs, regardless of their preparation, as “EPA approved.”

EPA accepts this response.

6. Record Retention: The existing PAG-13 language is unclear when it comes to the length of time records must be retained. The draft 2018 PAG-13 clarified it by using direct regulatory language requiring 3 years retention for MS4s; however, upon contemplating DEP’s inspection frequency of MS4s, we decided to increase it to 5 years, which we believe is also authorized by the regulations at the permitting authority’s discretion.

EPA agrees with this change.

7. CCD MOU requirement for MCM #5: See response to Draft Fact Sheet Comment #5 above.

EPA agrees with this change.

8. SOP for Non-Municipal Permittees: We agree and this has been included for MCM #4.

EPA agrees with this change.

9. SOP for Non-Municipal Permittees: same as #8 for MCM #5.

EPA agrees with this change.

10. Other resources for LID: We are unsure what other resources could be cited here.

<http://www.ecy.wa.gov/programs/wq/stormwater/municipal/LID/Resources.html>

<http://www.maine.gov/dep/land/watershed/materials/lid-guidance-manual.pdf>

<http://www.lid-stormwater.net/>

<https://www.epa.gov/green-infrastructure>

<http://www.lowimpactdevelopment.org/publications.htm>

<https://dpw.lacounty.gov/idd/lib/fp/Hydrology/Low%20Impact%20Development%20Standards%20Manual.pdf>

11. Discharges to Chesapeake Bay watershed following NOI submission: We decided to remove this to simplify. At the time of the NOI submission, if the MS4 Requirements Table specifies that a PRP must be developed, we will expect it, and we will not update the Requirements Table (except for errors) until preparing for the 2023 PAG-13 General Permit.

EPA accepts this response.

12. How to track changes in discharges to impaired waters: See response to #11 above.

13. Proposed actions for known and suspected sources of pollutants (Appendices A, B and C):

The sentence referenced in this comment has been deleted. For Pollutant Control Measures, in general we are expecting: 1) development of a storm sewershed map to delineate the boundary of possible sources, 2) submission of an inventory of suspected and known sources, and 3) an investigation into each suspected source.

EPA agrees with the language added to the Fact Sheet explaining these expectations.

14. What are DEP's expectations for suspected source investigations? The General Permit indicates that sampling may or may not be necessary, depending on whether the investigation is part of IDD&E efforts. DEP expects to develop examples (models or templates) for every requirement of this General Permit. We expect to provide examples of the types of investigations that could be done in those documents, which will aid both MS4s and review staff; we feel this level of detail is better left to supporting documents rather than the General Permit.

EPA accepts this response.

15. Length of time to complete suspected source investigation: EPA commented that three years seems like too long of a period to complete a source investigation. In reviewing public comments, however, we came to the realization that it may not be sufficient time given the likelihood that MS4s will need to develop and implement PRPs in addition to the Pollutant Control Measures. Developing maps and inventories of suspected sources and conducting investigations of potentially large urbanized areas takes time. For new MS4s in particular it will be a significant effort in combination with all of the required plans to meet MCM requirements.

Existing permittees are required to be doing this in accordance with the current permit. EPA accepts a longer length of time for new permittees; however, lack of compliance with the requirements of the current permit is not a valid basis for allowing additional time in the next permit cycle to complete tasks.

16. Appendix D – Permit should note model plan and PRP Instructions: The purpose of the PRP appendices (D & E) is to 1) specify the overall pollutant reduction goals, 2) require implementation of the approved PRP (once DEP approves coverage) and 3) explain what is to be done in the event that changes to the PRPs is desired. In other words, the PRP will already be approved before appendices D & E go into effect, so there is no need to reference plan preparation materials in the permit itself.

EPA accepts this response.

17. Appendix D – TN reductions needed: Same response as #1, above, for your letter comments. General Permit has been updated accordingly.

EPA accepts this response.

18. Appendix D – Explain that if PRP is modified the reductions are still required: We think it is clear in the 1st paragraph that reductions must be made by the end of the 5th year of coverage – if a final report is submitted that uses an excuse such as, “we modified our PRP to meet 5% sediment reduction and DEP approved it by not objecting to it,” we will certainly consider that non-compliance.

EPA accepts this response.

19. Appendix E – TN reductions needed: PA does not have waters that are impaired specifically for TN with the exception of a small number of water supply reservoirs that are not affected by MS4s. If there is a local water impaired for “nutrients” according to our listing methodology for aquatic life, it invariably means the water is impacted by excessive TP. Therefore, in Appendix E we are requiring sediment reductions of 10% for waters impaired by siltation alone; TP reductions of 5% for waters impaired by nutrients alone; and

sediment and TP reductions of 10% and 5%, respectively, for waters impaired by both sediment and nutrients.

20. Reference to purchasing credits to satisfy pollutant load reduction requirements: EPA is pleased to see this language added as a place holder in the event that a trading program becomes available during the permit term. Recommended language has been added to Appendices D and E that can be found in the marked permit and fact sheet to address this stipulation.
21. Permittee liability when relying on another entity to implement BMPs: Federal regulations at 40 CFR 122.35(a)(3) state that “you remain responsible for compliance with your permit obligations if the other entity fails to implement the control measure (or component thereof.” Both the permit and fact sheet contain language that if a permittee enters into an MOU with another entity, they are not responsible and will NOT be held liable for implementation of BMPs. The permit must be consistent with the regulations; therefore, EPA recommends this language be removed or revised.

The previous version of the permit In Part C.111.F contained language completely contrary to language PADEP is proposing with this revised iteration.